

COURT OF APPEAL

71.

16th April, 1996.

Before: J.M. Collins, Esq., Q.C., President,  
R.C. Southwell, Esq., Q.C., and  
J.G. Nutting, Esq., Q.C.

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In the matter of the Representation of Louis Emile Jean

Between	Louis Emile Jean	Representor
And	Colin Douglas Murfitt	First Respondent
And	Murco Overseas Properties Limited	Second Respondent
And	The Viscount	Third Respondent

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Application by the First Respondent, made pursuant to the provisions of Article 18(2) of the Court of Appeal (Jersey) Law, 1961, for an Order discharging so much of the Order of the Deputy Bailiff, sitting as a Single Judge, on 28th March, 1996, as dismissed the application of the First Respondent for an Order:

- (1) that the Representor, being a person under a mental disability, be stayed from taking any further action in these proceedings;
- (2) that any further action in these proceedings by the Representor should be taken only by a Guardian or Curator, appointed to act on his behalf by the Court of Alderney; and
- (3) that the Representor be ordered to provide to the First Defendant certified copies of the Wills of Personality and Realty of the Representor's late wife.

APPLICATION DISMISSED.

Application by the Representor for an Order striking out the thirteenth ground of appeal of the First Respondent, set out in the Notice of Appeal dated 14th December, 1995, on the ground that the First Respondent has failed to comply with so much of the Order of the Deputy Bailiff, sitting as a Single Judge of the Court on 28th March, 1996, as directed that the said thirteenth ground be struck out if the First Respondent should fail to provide the Representor, within 7 days of the date of the Deputy Bailiff's Order, with, *inter alia*, the reasons why the witnesses which the First Respondent wishes to call at the hearing of his appeal, were not called at the hearing before the Royal Court on 11th May, 1995;

APPLICATION GRANTED, SAVE IN RESPECT OF EVIDENCE OF DR. PATRICK QUANTEN.

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Advocate J. D. Kelleher for the Representor  
The First Respondent in person.

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JUDGMENT

5 THE PRESIDENT: On 28th March, 1996, the learned Deputy Bailiff sitting as a Single Judge of this Court dismissed the First Respondent's summons of 29th February of the same year. Under Article 18(2) of the Court of Appeal (Jersey) Law, 1961 the First Respondent, Mr. Murfitt, has applied to the full Court for a reconsideration of the dismissal of that summons.

10 We heard submissions from the First Respondent, Mr. Murfitt, and from Dr. Kelleher and having done so we have no hesitation in confirming the decision of the learned Deputy Bailiff. We shall give our reasons when giving judgment on the substantive appeal.

15 On the same date the learned Deputy Bailiff ordered that the First Respondent, Mr. Murfitt, should provide in relation to the thirteenth ground of appeal: first, the names of the witnesses he wished to call on that appeal. Secondly, the nature of the evidence which each witness will give. Thirdly, the reason why such witnesses were not called by the First Respondent at the hearing before the Royal Court in May of 1995. The Deputy Bailiff further directed that if the First Respondent failed to comply with this Order within seven days then the relevant paragraph (paragraph 13 of his amended grounds of appeal) would be struck out.

25 Mr. Jean, the Representor, has applied through his advocate to strike out that thirteenth ground of appeal on the ground of failure to give the reason why such witnesses were not called by the First Respondent, Mr. Murfitt, at the hearing in May, 1995.

We have heard extensive submissions and our decision is that ground thirteen should be struck out for non-compliance with the Order save as relates to the evidence of Dr. Quanten, as to which we are prepared to hear Mr. Murfitt's submissions on whether such evidence should be accepted in accordance with Rule 12 of the said Court. Again, we will give the reasons in the course of our substantive judgment.

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10 [The Appellant's application under Rule 12 of the Court of Appeal (Civil) (Jersey) Rules, 1964, was subsequently refused.]

Authorities.

on striking out application

R.S.C. (1995 Ed'n): O.3, r.5.

re Jokai Tea Holdings Ltd (1993) 1 All ER 630 CA.

Grand Metropolitan Nominee (No. 2) Co. Ltd. -v- Evans (1993) 1 All  
ER 642 CA.

NOT DISTRIBUTED WITH JUDGMENT.

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18 APR '96: Murfitt-v-Jean CoFA: Decision on Costs; and  
on Appeal for lve to appeal  
to Queen's.

5 **THE PRESIDENT:** Mr. Murfitt has applied to us for leave to appeal to the Judicial Committee of the Privy Council. Mr. Murfitt, we do not give you leave to appeal.

10 Counsel for Mr. Jean has applied for costs on an indemnity basis. It is the conclusion of this Court having considered the whole matter and taking into account that the Royal Court, no doubt quite rightly, ordered indemnity costs in that Court, that in this Court the appropriate Order is that standard costs be ordered. However, we Order that those costs be taxed and paid forthwith, that is to say they do not await taxation in the action as a whole.

15 We reject the suggestion that costs be ordered against the company, the Second Respondent.